

CONSTITUTIONAL REFORMS.

A LETTER TO

JOHN PRICE WETHERILL, ESQ.

BY

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CONSTITUTIONAL REFORMS.

J. P. WETHERILL, Esq.

MY DEAR SIR:—As you have done me the honor to ask for suggestions with regard to the reforms to be hoped for at the hands of yourself and your colleagues in the approaching Constitutional Convention, I take pleasure in laying before you the opinions which I have been led to form on certain points. They relate, as you will observe, rather to matters connected with municipal government than to the broader questions which have agitated political parties throughout the State. Yet, I think that you will agree with me in saying that they are not on this account less important to our fellow-citizens. In fact, to an inhabitant of a city the details of municipal administration are practically of much greater moment than national issues which may attract far more attention. Few of the questions which agitate Congress, and pass into the history of the Union, are of half as much import to a citizen of Philadelphia as the common-place and apparently trivial concerns which it is the duty of the local authorities to regulate, and which in the aggregate control his daily life. The condition of the pavements over which his avocations are pursued; the cleanliness of the streets and the thoroughness of the drainage which invoke or avert pestilence; the character and abundance of his water supply; the perfection of the schools in which his children are educated; the efficiency and honesty of the police who should protect him in his rights; the price and quality of the gas which illuminates the streets and houses; the certainty and celerity with which his appeals to justice are answered; the hygienic regulations which preserve his vigor and usefulness; the taxation which determines what portion of his daily earnings may be reserved for his own uses and what portion is to be taken from him for the public benefit—all these are prosaic subjects which afford little opportunity for the display of rhetoric, and yet they constitute nine-tenths of the objects for which men associate themselves into communities and submit to the restraints of government. That our present system has woefully failed in securing these objects will not, I think, be denied by any candid and thoughtful man, and it is therefore to be hoped that the Constitutional Convention will devote its earnest atten-

tion to the inquiry whether it can so modify our organic law as to remove the obstacles which have thus far prevented the success of municipal administration. Few more important subjects will be presented for its consideration, and if, in devising a remedy for the evils under which we labor, it can at the same time remove some of the potent causes of the debased political morality, which is the most alarming symptom of advancing political decay, the Convention will earn the lasting gratitude of the people.

With your permission, therefore, I will briefly advert to two or three points in which the causes or the cure of our troubles would seem to be under the control of your body.

LOCAL SELF-GOVERNMENT.

In the first place, the source of much of the evil which we suffer is to be found in the exaggerated powers exercised by our Legislature. We boast that we are a free people, and yet there is not a municipality in the State that is not subject to a despotism as arbitrary and as irresponsible as that which vexes the inhabitants of Moscow or Constantinople. When, in the middle ages, the communes began to throw off the shackles of feudal tyranny and conquered or purchased their charters, they acquired rights far more substantial than those which we enjoy. So long as they rendered a nominal homage to their suzerain, paid him their allotted share of the public revenues, furnished their quota of fighting men in time of war, and admitted his representative to a share in the administration of justice, they were entitled to the right to administer their own internal affairs at their pleasure, and the terms of their charters could not be modified without the mutual assent of both parties. Such was the simple and common-sense arrangement under which the liberties of Europe grew until the centralization of power enabled the sovereign to crush out these nurseries of freedom.

With us, on the other hand, the theory of absolute and indefeasible sovereignty residing in the State, supreme in all things not specially reserved to the Federal authority, places every fragment of the people under a domination as autocratic and irresponsible as that of an Eastern despot. Because we form part of this sovereign people we imagine ourselves freemen, and yet we are exposed at any moment to have our rights taken away and our dearest privileges set aside by those who have no knowledge of our wants nor any practical solidarity of interests with us. Every detail of municipal government—all that which, as I have said above, affects most nearly the daily life of every citizen—is regulated for us by those who cannot possibly know anything about it, and in exchange for this we acquire the wretched privilege of similarly interfering with the self-government of our fellow-citizens.

When the member from Washington County is called upon to vote as to the vacating of an alley in Philadelphia, what knowledge or interest can he possibly bring to bear upon the question? Or, when the member from Monroe is required to pronounce upon some matter of local interest in Pittsburgh, what guidance can he have towards a just decision? The absurdity of such a system is so self-evident that the mere statement of it would seem to be sufficient to insure its removal.

The mode in which these gigantic powers are exercised is too notorious to require more than a passing allusion. If a gang of speculators is desirous to obtain possession of some street which has been opened and graded and paved at the expense of the citizens, they have only to visit Harrisburg, and by a liberal distribution of prospective stock, they acquire rights which enable them to set at defiance the government of the city. If a property owner in the suburbs wishes a street opened which the city refuses to do, because it will cost some hundreds of thousands of dollars to benefit his property by a few thousands, he has only to interest the member from his district, and the job is accomplished. If a few men seek to acquire unlimited power over their fellow-citizens they have only to frame a bill constituting them a "commission" to perform some special duty, and the Legislature will not hesitate to empower them to issue bonds in the name of the city, to levy taxes, to expend the public money without accountability to any one, and to name their own successors in office. In vain the public may protest against such legislation; it is always passed, unless it happens to interfere with the operations of some ring of politicians more influential than those who are interested in it.

Nay, more; our very municipality is merely the creature of the Legislature, which may abolish it altogether at any moment or interfere in the minutest details of its organization. If a city official dreads to appeal again to the people, he quietly proceeds to Harrisburg and has his term of office extended. If another is dissatisfied with the amount of his salary or the aggregate of his fees, he appeals to the same supreme power to increase his official plunder. The people are not consulted as to their wishes on any matter of public concern; and indeed our courts have ingeniously reasoned out the theory and reduced it to practice that the Legislature has no right under the constitution to refer any question back to the people. It must govern them in ignorance of their wishes and is forbidden to ask them what they want.

When a private corporation obtains a charter from the Legislature, any amendment to that charter must be submitted to the stockholders and receive their assent before it becomes valid. It is true that in the Dartmouth College case the Supreme Court of the United States drew this distinction between public and private corporations, that with the one the assent of those interested was not requisite, while with the other

it was ; yet common sense fails to grasp the justice of a construction which so carefully guards the rights of property, and leaves every interest of large communities exposed to the ignorance and rapacity of those who may be strangers or may be venal.

Practically, this state of affairs results in making each member autocratic over his own district, and the Philadelphia delegation over the city at large, for, by the *lex non scripta* of the Legislature, members refrain from interfering with "private bills" relating to the districts of their colleagues. Thus the absurdity of our system seeks to correct itself by concentrating upon one, two, or twenty-two men, the whole sovereignty of the State in so far as it controls the affairs of our municipality.

It is thus easy to understand why men will pay thousands of dollars to secure their election to an office which lasts but for a year, and of which the salary and allowances do not amount to over a thousand dollars—but little more than enough to pay their expenses at Harrisburg during a session. Their unlimited power over the franchises and interests of so wealthy a city as Philadelphia is easily transmuted into money, and there is scarcely a limit to the gains of the shrewd and unprincipled. This further explains why the average character of our representatives has been steadily sinking, until it is difficult for Philadelphia to get an honest man to consent to serve as a lawmaker for the great Commonwealth of Pennsylvania, so general is the odium attached to the position, and so intense is the disgust felt at the companionship which it imposes.

It is self-evident that some remedy must be found for these evils, if our institutions are expected to hold together for another generation ; and that remedy, I think, lies in recurring to the principles on which our institutions are founded—the right of self-government. Power must be lodged somewhere, and, unless our political theories are a delusion, the nearer it is brought to the people the more safely it will be exercised. When the Federal Government was established its founders wisely conferred upon the central power only such authority as was requisite to manage the collective interests of the nation, and left to the several States the direction of their internal affairs. Since then our great Commonwealth has grown until it is equal by itself to the whole of the original Federation, and the time has come to apply to it the principle which has worked so well in the nation at large. Let the people of every section of the State be supreme in the management of their own local affairs, and restrict the central authority to such matters alone as concern the interests of the whole.

Under such a system the Legislature would be competent to pass only general laws. It would adopt some general formula by which the people of any given locality, with proper limitations as to number and area,

might incorporate themselves into a municipality, when they would frame their own form of local administration and alter it at pleasure—under the restriction, of course, that they could at no time violate the principles of the Constitution of the State or Union, or disobey the general laws which would govern the whole State. Under those laws all questions which at first sight would seem likely to provoke difficulties would readily be provided for—such as the rights to navigable rivers, expropriations for railroads and other public improvements, the construction of bridges between coterminous counties, etc. Thus, upon the people of each locality would be cast the entire responsibility of managing their own affairs; and it is not for us, who believe in republican government, to doubt that they would prove equal to the task. It is true that our municipal administration is not at the present moment particularly encouraging; but, bad as our Councils may be, I would sooner trust them than the Legislature. They can be more readily watched, and held to a closer and sharper responsibility. Besides this, a change such as I suggest would awaken the average citizen to a livelier sense of his political duties, and he would always know who was at fault when a wrong was committed, instead of having all responsibility so divided up and frittered away as to enable designing rogues to evade the consequences of their acts.

Such a change as this would of itself be sufficient to redeem the character of the Legislature. Deprived of the sources of plunder afforded by “private bills” membership would no longer be sought by the depraved and unprincipled men who now constitute the majority of our city delegation. Once more, as of old, the position would be an honorable one and would be filled by honorable and intelligent men.

More than all this, the great fountain of corruption would be dried up. Nothing has tended more fatally to lower the standard of public morality than the spectacle of our Legislature, ostensibly assembled to deliberate on the concerns of a great and wealthy Commonwealth, yet composed of men who openly deride the notion that they can be disinterested, and who almost publicly expose the rights of their constituents at auction to the highest bidder. When such exhibitions as these become habitual, as they have been of late years, so that the public comes to tolerate them as a sort of necessity, to look with apathetic indifference on the barter and sale of their rights, and perhaps even to applaud and honor the successful corruptionist, a change cannot be far off. The history of mankind shows that no institutions can be long lived which have not the inherent vitality to purge themselves of the evils developed in their growth.

Illinois, with far less experience than Pennsylvania of the ills resulting from the overgrown power of a central Legislature, has shown us an example which we would do well to follow. In the new Constitution of

1870, Art. IV., Sect. 22 contains the following list of limitations imposed upon the law-making power:—

“The general assembly shall not pass local or special laws in any of the following enumerated cases, that is to say: for—

- “Granting divorces;
- “Changing the names of persons or places;
- “Laying out, opening, altering, and working roads and highways;
- “Vacating roads, town plots, streets, alleys, and public grounds;
- “Locating or changing county seats;
- “*Regulating county and township affairs;*
- “Regulating the practice in courts of justice;
- “Regulating the jurisdiction and duties of justices of the peace, police magistrates, and constables;
- “*Incorporating cities, towns, or villages, or changing or amending the charter of any town, city, or village;*
- “Providing for the election of members of boards of supervisors in townships, incorporated towns, or cities;
- “Summoning or empanelling grand or petit juries;
- “Providing for the management of common schools;
- “Regulating the rate of interest on money;
- “The opening and conducting of any election, or designating the place of voting;
- “The sale or mortgage of real estate belonging to minors or others under disability;
- “The protection of game or fish;
- “Chartering or licensing ferries or toll bridges;
- “Remitting fines, penalties, or forfeitures;
- “Creating, increasing, or decreasing fees, percentage, or allowances of public officers, during the term of service for which said officers are elected or appointed;
- “Changing the law of descent;
- “Granting to any corporation, association, or individual, the right to lay down railroad tracks, or amending existing charters for such purpose;
- “Granting to any corporation, association, or individual, any special or exclusive privilege, immunity, or franchise whatever;
- “*In all other cases, where a general law can be made applicable, no special law shall be enacted.*”

The provisions italicized go a long way towards the objects which we have at heart, yet they do not secure as thoroughly as they should the right of local self-government, which is only conferred by implication and not expressly. How easily such provisions can be overridden and eluded was shown when the Illinois Legislature desired to interfere with the local affairs of Peoria, and passed a general act providing certain rules for all cities containing the number of inhabitants which had been reported in the census as the population of that town—a general act in terms, but a special act in purpose and effect. So here, our Legislature might pass any number of general laws for the government of cities having seven hundred thousand inhabitants and upwards, and thus expose us to a continuance of all the evils which we suffer from that source.

This letter has already far exceeded its anticipated limits, and yet I cannot conclude without calling your attention to two other matters, of which the remedy can only be expected from your Convention.

ALDERMEN.

There is probably no more prolific source of wrong and crime amongst us than our system of administering justice in petty cases. It is true, that throughout the State the justices of the peace are usually upright men, selected by neighbors who know their abilities, and their discharge of their duties is doubtless, in the main, substantially satisfactory. In a large city like Philadelphia, however, the case is different. The candidate for alderman is usually an individual unknown to the majority of voters, but too well known to the violent and reckless men who manage primary elections and delegate conventions. The position has few attractions for honest men who can earn a reputable support, for the number of these officials is so great that the revenues of the office, if confined to legal fees and legitimate business, are inadequate. The voter, therefore, has little choice in the exercise of his suffrage; he votes in ignorance of the character of his candidate, without much thought as to the importance of the matter, and with the general conviction that it makes little difference which of two unfit competitors is chosen. Everything, therefore, conspires to place in office venal, brutal, and unprincipled men, whose sole object is to extract the largest possible amount of gain from the position, and who have little scruple how that gain is to be obtained. To such men is confided power almost despotic and irresponsible over the poor, the friendless, and the helpless; and the sum of misery which they cause, if it could be shown in the aggregate, might well startle and put to shame the Christian community which permits it.

These evils seem the inevitable results of a system which grew up in by-gone ages amid a scattered population of simple habits, and which is now applied to dense communities engrossed in the bustle and excitement of modern existence. That they are felt elsewhere is shown by a provision in the new Constitution of Illinois, which recognizes the exceptional condition of large cities, and provides a remedy worthy of your consideration. Art. VI., Sect. 28 of that instrument declares that—

“All justices of the peace in the city of Chicago shall be appointed by the governor, by and with the advice and consent of the Senate (but only upon the recommendation of a majority of the judges of the circuit, superior, and county courts), and for such districts as are now, or may hereafter be provided by law. They shall hold their offices for four years, and until their successors have been commissioned and qualified, but they may be removed by summary proceeding in the circuit or superior courts for extortion or other malfeasance.”

This is undoubtedly a step in the right direction, but it might be considerably improved. Your Convention might provide that, in all cities of over one hundred thousand inhabitants, the aldermen or justices of the peace should be appointed. It would probably be considered contrary to public policy to increase the political patronage of the courts by vesting in them an appointing or recommendatory power, but the selection might

be left to some responsible official—the mayor of the city or the governor of the State. The appointee should be a man learned in the law, not less than thirty years of age. Appointments should be confined to one for each ward. The incumbent should hold office for a definite term of years, or during good behavior, and receive a fixed salary sufficient to render the position acceptable to men of good character and training. All fees should inure to the public treasury, and thus we should obtain a class of stipendiary magistrates, such as have been found in England admirably adapted to administer cheap and speedy justice in petty actions. The dockets of our criminal courts would no longer be crowded with an infinity of trivial cases which never should leave the lower tribunal, and which are now returned to court simply to enhance the revenues of the alderman. Grand juries, therefore, would no longer be necessary to sift these cases, and to protect the courts from being overwhelmed.

One of the provisions of the Illinois Constitution is especially valuable—that which vests in the courts the power of summary removal. By giving the right to any citizen aggrieved by a magistrate to apply to court for his removal on due cause shown, a most wholesome check would be established, which would protect the people from tyranny or extortion.

THE GRAND JURY.

When the institution of the grand jury was formed, it was an exceedingly valuable protection against the oppression of petty nobles and crown officials. A selection of twenty-three good and lawful freeholders of a shire whose assent was necessary in all cases of criminal prosecution, and who were empowered to inquire into the abuses of all public institutions, was an inestimable safeguard in times when men were exposed to the arbitrary passions of those in power. In the purer atmosphere of country districts the grand jury no doubt still retains much of its value as part of the machinery of justice, and as an efficient means for remedying abuses. In a great city, however, the case is different, and it has become a mere surplusage for all good purposes, efficient only as an instrument in the hands of bad men to defeat the ends of justice.

No matter what precautions may be used in the drawing of grand juries, experience has shown that whenever an indictment is brought against an “influential” man, somehow or other there appear from the wheel the names of enough political friends to insure the ignoring of the bill. It is not worth while to refer specifically to the cases of this kind which have distinguished our criminal annals within the past few years, for the facts are notorious to all observing men. Even when the chance has not been so lucky, or when the case of a wealthy criminal may be brought unexpectedly before a jury already drawn, there is nothing to

prevent three or four of the jurors from being "seen," and advantage taken of any weakness to which they may be liable.

The procedure of the grand jury room is admirably adapted to develop all the evil of which the system is capable. The grand jury serves for a month, sitting a few hours a day. The members are known and can readily be approached previous to their action on an indictment. When in session they sit in secret, with every juror sworn to silence. But one witness is admitted at a time, and no one can know the nature of the evidence which reaches them. Twelve affirmative votes are requisite to the finding of a true bill, so that when the attendance is small, one, two, or three friends of the accused may be sufficient to ignore it. The public is kept in ignorance of what occurs in the jury-room, and there is no responsibility anywhere. A system better calculated to secure impunity for rogues of wealth or influence, it would be hard for the wit of man to devise.

Even in ordinary criminal cases it is likewise liable to the most shocking abuse. A happy neglect on the part of the minor officials of the court in summoning witnesses may lead the most honest jury to ignore any given bill. This may or may not happen; the atmosphere of the Quarter Sessions may be such as to encourage preternatural robustness of integrity, so that the tipstaves may be proof against the advances of those who are interested in the escape of particular defendants, but any one who has ever served on a grand jury must have observed how many bills are necessarily ignored in consequence of the absence of prosecutor and witnesses at the time when the bills are called. Is it wise to expose men on small stipends to temptations so great in matters upon which the due administration of justice depends?

Practically, the duties of the grand jury are twofold. The one is ornamental—to visit the almshouse, the prison, and other public institutions, and to make recommendations on any subject which may engage their attention. These recommendations are never listened to, but if such functions are considered important to the public welfare, it is easy to have them periodically performed by a body of citizens, selected in any manner that may be deemed suitable. The other duty is to serve as a sieve for the criminal court, by rejecting all cases of which the importance is insufficient to warrant their occupying the time of judges and petit juries. This function, which is liable to such dangerous abuse, finds its only justification in the ignorance and corruption of our aldermen, who persistently return to court thousands of trivial cases which should never get beyond their jurisdiction. If the aldermen can be abolished by your Convention, and replaced by self-respecting, impartial, and intelligent magistrates, the sole excuse for the cumbrous and illogical procedure of the grand jury system will be removed, and this remnant of the dark

ages, with all its opportunities for the suppression of justice, can safely be swept away.

If it should seem a reckless proposition to do away with so apparently essential a portion of the old Common Law of England, I may add that the suggestion has already been made in the Illinois Constitution, which I have had occasion to quote so frequently. In Art. II., Sect. 8, of that instrument, there is a provision "that the grand jury may be abolished by law in all cases."

This is an improvement, but I think you will agree with me that a far more satisfactory provision would be to abolish the grand jury system in all cities of over a hundred thousand inhabitants, where the primary jurisdiction shall be placed in the hands of stipendiary magistrates. Thus, the country districts and smaller towns would continue to use a system adapted to their wants, while the larger cities would be relieved from the evils inseparable from rigidly maintaining ancestral institutions amid the changed conditions and spreading corruptions of modern municipal life.

There are other matters to which I would be glad to draw your attention, but this letter has been so unduly lengthened, that I forbear. Permit me to add in conclusion, that the city of Philadelphia looks with confidence to the intelligence and fidelity of yourself and your colleagues for permanent relief from the long train of abuses which threaten, unless checked, to render Republican institutions a by-word among the nations. Such an opportunity to earn the gratitude of generations is vouchsafed to but few citizens, and in the assurance that your well-tried energy will take full advantage of it,

I have the honor to remain,

Very truly yours,

HENRY C. LEA.

NO. 2000 WALNUT STREET,
October 31, 1872.